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Cc:

Subject: RE: Need Help in Interpreting a Treaty Provision

In this case, the Mutual Agreement Procedure article won't waive the statute and allow an assessment.

Generally, whether the MAP article will waive the statute depends on whether the adjustment is foreign or U.S. initiated. The purpose of tax treaties is to avoid or at least minimize double tax, and therefore, a treaty cannot be used to increase a taxpayer's income. This may be done only through an assessment. Accordingly, if the statute to assess in the United States is closed for a tax year, we can't assess tax under the treaty.

Most treaties contain language in the MAP article similar to that which you have quoted below. Competent authority has interpreted this language to mean that if Country A raises an adjustment, the United States can grant relief (a refund) even if it is for a tax year for which the statute to assess has closed. The United States would not be able to increase a taxpayer's income under the treaty unless the Field has already assessed additional tax and the statute to assess has passed. If the United States raised the adjustment, then the case would stay open with the Field, and the statute would be protected.

Please let me know if you have other questions.